JDG-HRG
(4/91 IAN)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

In re:

STEVEN RIEGER
CARMEN RIEGER

Debtor

CHAPTER 7
Case No.

94-12006KC

JUDGMENT

This proceeding having come on for trial or hearing before the court, the Honorable Paul J. Kilburg, United States Bankruptcy Judge, presiding, and the issues having been duly tried or heard and a decision having been rendered,

IT IS ORDERED AND ADJUDGED: The Motion to Dismiss filed by the Internal Revenue Service is sustained and this Chapter 7 Bankruptcy Petition is dismissed.

FURTHER, it is ordered that the Motion for Sanctions filed by the Internal Revenue Service is granted and that Debtors jointly and severally are sanctioned in the total amount of $750.00 to be payable forthwith.

BARBARA A. EVERLY
Clerk of Bankruptcy Court

By: Maureen A. Gray
Deputy Clerk

[Seal of the U.S. Bankruptcy Court]
Date of Issuance: May 19, 1995

Recorded Vol V
Page 22

SC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

IN RE:	)	
	)	Chapter 7
STEVEN RIEGER	)	
CARMEN RIEGER,	)	Bankruptcy No. 94-12006KC
	)	
Debtors.	)	

ORDER RE MOTION TO DISMISS AND FOR SANCTIONS

On April 13, 1995, the above-captioned matter came on for hearing pursuant to assignment. Debtors appeared pro se. Assistant U.S. Attorney Ana Maria Martel represented the Internal Revenue Service (IRS). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B, K).

STATEMENT OF THE CASE

Steven Edward Rieger filed a voluntary Chapter 7 joint bankruptcy petition on December 13, 1994 on behalf of himself and his wife, Carmen Lilian Rieger ("Debtors"). Mrs. Rieger did not personally sign the petition; Mr. Rieger signed on her behalf under a power of attorney. After a hearing, this Court concluded that the signature of Mrs. Rieger was adequate and that the bankruptcy proceedings should continue.

On January 18, 1995, Debtors filed a Motion to Set Aside Claim for Taxes. Even though Debtors failed to notify the IRS under Bankruptcy Rules 3007 and 7001, the IRS filed an answer to Debtors' Motion. The IRS asked the Court to consider an identical motion Debtors filed on October 15, 1992, on the same issue in Case No. 92-11311LC. The IRS submitted copies of the Court records which establish the issues and outcome of those proceedings. The IRS asked this Court to determine that Debtors are precluded from relitigating these previously adjudicated issues. On February 17, 1995, the Court issued an Order denying Debtors' Motion to Set Aside Tax Claim, based largely on principles of res judicata.

The pending petition is the fifth bankruptcy petition Debtors have filed since June 22, 1987 when Debtors first sought bankruptcy protection under a Chapter 13 filing (No. 87-01617C). The first petition was dismissed on November 10, 1987, because Debtors failed to file a feasible reorganization plan.

Debtors filed a second Chapter 13 petition (No. L88-00763C) on May 11, 1988. This petition was converted to a Chapter 7 on June 1, 1990. Debtors received a discharge on December 6, 1990.

Debtors' third Chapter 13 petition (No. 92-11311LC) was filed on July 1, 1992. It challenged the constitutionality of

the IRS' ability to levy taxes on Debtors' income. This Court rejected Debtors' claims and denied Debtors' Motion to Set Aside Tax Claim. The Court dismissed this petition on July 7, 1993.

On April 20, 1994, Debtors filed their fourth bankruptcy petition. Under Chapter 7, Debtors requested a "discharge of debts". The IRS, as claimant, moved to dismiss this petition based upon the previously granted discharge. Debtors' Motion to Discharge Debts was denied and Debtors' bankruptcy petition was dismissed pursuant to §§ 727(a)(8) and 727(a)(2) on October 25, 1994.

In the present case, the IRS moves to dismiss this bankruptcy petition alleging that it was filed in bad faith to avoid payment of federal and state taxes. The IRS also asks this Court to impose sanctions on Debtors for their continual abuse of the bankruptcy process. Finally, the IRS seeks an Order exempting it from the effect of the automatic stay provisions of 11 U.S.C. § 362 in any future bankruptcy proceedings Debtors may file. Debtors filed a Motion on April 7, 1995, seeking denial of the Motion to Dismiss and For Sanctions.

MOTION TO DISMISS

The Court may dismiss a case for cause under § 707(a) after notice and a hearing. As the Code does not define "cause", a judicial determination of cause warranting dismissal rests in the sound discretion of the bankruptcy court. In re Cecil, 71 B.R. 730, 734 (Bankr. W.D. Va. 1987); see In re Ouverson, 79 B.R. 830, 832 (Bankr. N.D. Iowa 1987) (in Chapter 12, lack of good faith constitutes cause for lifting the stay or for dismissal of the case). A list of factors that may be considered in determining whether good cause exists to dismiss a bankruptcy petition is set out in § 707(a). This list is neither exclusive nor exhaustive. In re Huckfeldt, 39 F.3d 829, 831 (8th Cir. 1994); In re Atlas Supply Corp., 857 F.2d 1061, 1063 (5th Cir. 1988). In evaluating a motion to dismiss, "[t]he court must balance the equities and weigh the benefits and prejudices of a dismissal." Atlas Supply, 857 F.2d at 1063.

The Eighth Circuit holds that when determining whether to dismiss a Chapter 7 petition under § 707(a), courts should not inquire as to debtors' ability to pay their debts, nor should the courts dismiss the Chapter 7 petition merely to sanction debtors' bad faith. However, conduct properly characterized as "bad faith" may constitute cause to dismiss a Chapter 7 petition. Huckfeldt, 39 F.3d at 832.

Other courts also consider bad faith an appropriate basis upon which to dismiss a bankruptcy Petition under § 707(a). In re Zick, 931 F.2d 1124, 1127 (6th Cir. 1991); In re Markizer, 66

B.R. 1014 (Bankr. S.D. Fla. 1986); In re Jones, 114 B.R. 917, 926 (Bankr. N.D. Ohio 1990). These courts hold that the issue of bad faith must be evaluated on a case-by-case basis. Zick, 931 F.2d at 1129; Jones, 114 B.R. at 926; In re Brown, 88 B.R. 280, 284 (Bankr. D. Haw. 1988).

In determining what constitutes bad faith, courts have held that all the facts and circumstances of a particular case must be scrutinized. In re Campbell, 124 B.R. 462, 464 (Bankr. W.D. Pa. 1991). Bad faith requires a subjective test. In re Khan, 172 B.R. 613, 625 (Bankr. D. Minn. 1994). In In re Dostal, No. 94-10108KC, slip op. at 5 (Bankr. N.D. Iowa Mar. 31, 1994), this Court held that:

> [t]here is no particular test for determining whether a debtor has filed a petition in bad faith. Instead, the courts may consider any factors which evidence "an intent to abuse the judicial process and the purposes of the reorganization provisions" or, in particular, factors which evidence that the petition was filed "to delay or frustrate the legitimate efforts of creditors to enforce their rights".

The Court also considered:

> [f]iling of successive petitions [as] indicia of bad faith where there is no bona fide change in circumstances that justifies multiple filings or where subsequent filings are designed to frustrate statutory requirements or abuse the bankruptcy process.

In re Funke, No. 93-21255KD, slip op. at 7 (Bankr. N.D. Iowa Oct. 21, 1993).

Another critical factor in the evaluation process is "whether the debtors' filing is simply an attempt to forestall or delay legitimate rights of creditors". In re Wild, No. L-92-00165C, slip op. at 7 (Bankr. N.D. Iowa Jan. 30, 1992). Accord Ouverson, 79 B.R. at 832 (holding that if it is obvious that debtor is unreasonably attempting to deter and harass creditors in their bona fide efforts to realize upon their securities, good faith does not exist); Khan, 172 B.R. at 625 (noting that bad faith is evidenced by the debtor's pervasive and orchestrated efforts to interpose the automatic stay, by manifest dishonesty toward the legal tribunal).

Other courts considering this issue have enunciated similar principles. One court listed "multiple case filings or other extraordinary procedural gymnastics and existence of a predominant dispute between debtor and a single creditor" as

relevant factors of a case appropriate for dismissal. In re Hammonds, 139 B.R. 535, 542 (Bankr. D. Colo. 1992). In Zick, the court held that dismissal based on lack of good faith "should be confined carefully and is generally utilized only in those cases that entail intention to avoid a large single debt based on conduct akin to fraud, misconduct or gross negligence". Zick, 931 F.2d at 1129. Finally, "[b]ad faith may be found when the debtor has a frivolous, noneconomic motive for filing a bankruptcy petition, when there is a sinister or unworthy purpose, or when there is an abuse of the judicial process." In re Kempner, 152 B.R. 37, 39 (Bankr. D. Del. 1993).

Debtors' present petition is an unambiguous attempt to forestall the legitimate rights of a creditor. The fact that the creditor is a government agency is irrelevant. Debtors have consistently filed their bankruptcy petitions after the IRS has notified Debtors that it was going to impose a levy against their wages, or shortly after the IRS had levied on Debtors' wages. Debtors' first and last Chapter 13 petitions were dismissed because Debtors failed to propose a viable plan for confirmation. In their second Chapter 13 petition, converted to a Chapter 7, this Court allowed the IRS's claim against Debtors. Debtors unsuccessfully sought to set aside the tax claims against them in their Chapter 13 petition and in this Chapter 7 proceeding. Even though Debtors have been unsuccessful in their attempts to set aside these tax obligations, they have made no payments. Instead, their bankruptcy filings are a direct response to the IRS's attempt to levy their wages.

Multiple filings without bona fide change in circumstances may be indicia of a bad faith filing. Funke, slip op. at 7. Debtors' financial condition has not undergone any significant changes since they first filed for bankruptcy in 1987. Debtors have continually attempted to avoid paying taxes as required by law, and as specifically adjudicated in Debtors' prior bankruptcy filings. Thus, without doubt, Debtors' successive filings are directed against IRS's attempts to levy their wages. It is a thinly disguised attempt on the part of Debtors to avoid paying their tax obligations. This record establishes, without doubt, that Debtors filed the current Chapter 7 petition in bad faith to forestall or delay legitimate rights of a creditor.

Filing of this petition in bad faith also constitutes an abuse of the bankruptcy process. Kempner, 152 B.R. at 39. Consequently, Debtors' successive filings and continual meritless challenges to the constitutionality of the Federal tax system are properly characterized as misconduct. In light of the foregoing, this Court concludes that Debtors' petition for relief under Chapter 7 was filed in bad faith and their petition should be dismissed.

MOTION FOR SANCTIONS

Having concluded that Debtors filed their petition in bad faith, courts are empowered to determine whether sanctions are warranted. In re Arkansas Communities, Inc., 827 F.2d 1219, 1222 (8th Cir. 1987); In re Alberto, 119 B.R. 985, 992 (Bankr. N.D. Ill. 1990). In doing so, the mandates of Rule 9011 must be followed. Arkansas Communities, 827 F.2d at 1222. The Eighth Circuit has authorized the imposition of sanctions against a debtor's attorney who repeatedly, and in bad faith, objected to appointment of trustee and law firm. Id. Accordingly, Bankruptcy Courts have wide discretion in determining appropriate sanctions under Rule 9011. In re KTMA Acquisition Corp., 153 B.R. 238, 268 (Bankr. D. Minn. 1993); In re McAllister, 123 B.R. 393, 395 (Bankr. D. Or. 1991).

In relevant part, Bankruptcy Rule 9011 states:

> A party who is not represented by an attorney shall sign papers and state the party's address and telephone number. The signature constitutes a certificate that to the best of the signor's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation or administration of the case.

Courts must use an objective test to determine whether Debtors' bad faith filing warrants imposition of sanctions. In re Cedar Falls Hotel Properties Ltd. Partnership, 102 B.R. 1009, 1015 (Bankr. N.D. Iowa 1989); KTMA Acquisition Corp., 153 B.R. at 248. Accord In re Rainbow Magazine, Inc., 136 B.R. 545, 550 (Bankr. 9th Cir. 1992) (noting that in context of bad faith filing, sanction under 9011 is determined by objective test). "Generally only those claims without any factual or legal basis whatsoever are sanctionable". In re Florida Bay Banks, Inc., 156 B.R. 673, 675 (Bankr. N.D. Fla. 1993).

An objective evaluation requires a determination of whether, under the circumstances of this case, a reasonable debtor could have believed that a Chapter 7 discharge was possible. Courts use two prongs when applying Rule 9011: (1) the frivolous filing, and (2) the improper purpose. Cedar Falls Hotel, 102 B.R. at 1014. The first prong seeks to deter filings that are not well grounded in fact or warranted by existing law, or good faith argument for the extension, modification, or

reversal of existing law. Id. The improper purpose prong seeks to determine whether debtor's filing is designed to interpose, harass, delay or unnecessarily increase the cost of litigation. Id.; KTMA Acquisition Corp., 153 B.R. at 247. In this case, Debtors' bad faith, under objective scrutiny, is a clear violation of Rule 9011.

Debtors have filed numerous bankruptcy petitions, including the present filing, after IRS attempts to levy their wages or shortly after the IRS began garnishing Debtors' wages. In two of their Chapter 13 petitions, Debtors did not file a feasible plan. These facts conclusively establish that Debtors' filings were intended to interfere with the IRS's legitimate efforts to assert its claims. Under Rule 9011, this constitutes filing for an improper purpose. Cedar Falls Hotel, 102 B.R. at 1017; KTMA Acquisition Corp., 153 B.R. at 247.

In this case, a clear indication that Debtors' filing is not well grounded in fact is found in Debtors' Motion to Set Aside Taxes. This issue was litigated in Debtors' second Chapter 13. The Court ruled against Debtors. Debtors appealed to the District Court, with the District Court affirming the ruling of this Court. In this Chapter 7, Debtors again filed the identical Motion. Debtors did not propose a new argument seeking the extension, modification, or reversal of existing law. Instead, Debtors filed the same motion presented in their Chapter 13. Accordingly, Debtors cannot now claim that this Chapter 7 is well grounded in fact. Their arguments constitute a clear violation of Rule 9011, and this petition is meritless.

A majority of courts impose sanctions after finding that the debtors have filed bankruptcy in bad faith. In Cedar Falls hotel, the court noted that there was more than "mere" bad faith and imposed sanctions under Rule 9011. Cedar Falls Hotel, 102 B.R. at 1017. See also In re Coones Ranch, Inc., 7 F.3d 740, 742 (8th Cir. 1993) (sanctioning debtor's attorney for bad faith filing since petition was not well-grounded in fact, nor warranted by existing law or good faith argument); In re Eisen, 14 F.3d 469, 471 (9th Cir. 1994) (sanctioning debtor for bad faith successive filing); In re Boyd, 143 B.R. 237 (Bankr. C.D. Cal. 1992) (holding debtor and its attorney jointly and severally liable for sanctions for an improper purpose).

Bankruptcy Rule 9011 is intended to avoid unnecessary delay and expense in litigation by deterring costly meritless maneuvers. Florida Bay Banks, 156 B.R. at 675. The primary purpose in imposing sanctions under Rule 9011 is to deter future violations of the rule, while compensating the opposing party is a secondary purpose. In re Reynolds, 117 B.R. 452, 455 (Bankr. S.D. Iowa 1990). Upon conclusion that Rule 9011 has been violated, sanctions are mandatory. Cedar Falls Hotel, 102 B.R., at 1018; McAllister, 123 B.R. at 395. This Rule is indubitably

applicable to a pro se litigant. KTMA Acquisition Corp., 153 B.R. at 251.

A court may consider several factors in determining what sanctions are most appropriate. Courts consider the following:

(1) the ability to pay a fine;
(2) whether the sanction is the least severe that will deter undesirable conduct;
(3) the effect of the conduct on the court's docket;
(4) the prejudice to parties resulting from the conduct;
(5) the deterrent effect to protect the integrity of the judicial system;
(6) the reasonableness of the fees and expenses incurred because of the improper behavior, including analysis of any duty to mitigate (i.e., not over-researching or over-discovering clearly meritless claims);
(7) whether the area needs a special expertise;
(8) the offending party's history, experience and ability;
(9) the severity of the violation;
(10) the degree to which malice or bad faith contributed to the violation;
(11) the risk of chilling the type of litigation involved;
(12) any other factors appropriate in the individual circumstances.

In re Brown, 152 B.R. 563, 569 (Bankr. E.D. Ark. 1993). Having determined that sanctions are appropriate, the sanctions must nevertheless be narrowly tailored to accomplish the specific purposes of the rule. Cedar Falls Hotel, 102 B.R. at 1018.

SUMMARY

As this record amply reflects, Debtors have filed five separate bankruptcy petitions since 1987. They were ultimately granted a discharge in a Chapter 7 petition in December of 1990. However, substantial Federal tax obligations have accumulated because of Debtors' resolute position that the taxing authority of the Federal government is unconstitutional. Debtors have raised this issue in all of their bankruptcy filings and have been denied relief in every case. Debtors' financial picture reflects that the only major obligations owing by Debtors relate to their State and Federal taxes. Debtor Steven Rieger is employed at Rockwell and has been employed there for seventeen years. His gross income is in excess of $4,300 per month. Debtor Carmen Rieger is also employed earning minimum wage. Other than the Internal Revenue Service and the Iowa Department of Revenue and Finance, Debtors' Schedules indicate that Debtors' income could liquidate any outstanding debt in a short period of time.

Debtors have filed this bankruptcy petition as well as most of the other petitions for the sole purpose of frustrating the collection efforts of the Internal Revenue Service and the Iowa Department of Revenue based upon a misplaced belief that the tax laws are unconstitutional. Debtors' arguments in this regard have been raised in each bankruptcy case and have been rejected not only in this Court, but every Court in the United States, to the best of this Court's knowledge. Debtors' attempts are nothing more than an attempt to frustrate the collection efforts of the taxing authorities and no legitimate bankruptcy purpose is presented in the petition.

Sanctions should only be awarded under Rule 9011 when Debtors' claims are without any factual or legal basis. As indicated, Debtors' position, taken consistently in these proceedings, is designed solely for the improper purpose of frustrating the collection efforts of the taxing authorities. Additionally, Debtors have been consistently advised by various Court rulings that their position is not grounded in fact, is not warranted by existing law, and cannot, in good faith, be urged for the extension, modification or reversal of existing law. In other words, Debtors' conduct, in this case, amply satisfies both prongs of the test enunciated in Cedar Falls Hotel, 102 B.R. at 1014. Under all of the circumstances of this record, sanctions are appropriate.

In determining the appropriate amount or type of sanction, the Court must use the minimum sanction appropriate to address the conduct established. As indicated earlier in this ruling, multiple factors can be considered in determining the appropriateness and the amount of the sanction. The Court will not go into each factor individually as many of the factors have already been addressed indirectly in this opinion. It is sufficient to state that on Debtors' income, Debtors do have the ability to pay their obligations as they become due. They also have the ability to pay a reasonable monetary sanction. This present petition has been filed only to thwart the collection efforts of the IRS and for no legitimate bankruptcy purpose. As the sole reason Debtors filed these serial bankruptcies is to invoke the automatic stay to prevent collection efforts, a portion of the sanction which appears most appropriate is to deny Debtors the benefit of the automatic stay in any future bankruptcy filings.

In conclusion, the record warrants imposition of a reasonable monetary sanction and denial of the automatic stay to Debtors under 11 U.S.C. § 362 in any future bankruptcy proceedings which Debtors may file until such time as a full hearing on notice is held and Debtors establish to the Court's satisfaction that the petition is filed in good faith for legitimate purposes enunciated under existing bankruptcy law.

WHEREFORE, for all of the reasons set forth herein, the Motion to Dismiss filed by the Internal Revenue Service is sustained.

FURTHER, this Chapter 7 Bankruptcy Petition is dismissed.

FURTHER, it is ordered that the Motion for Sanctions filed by the Internal Revenue Service is granted.

FURTHER, by way of sanction, it is ordered that Debtors jointly and severally are sanctioned in the total amount of $750.00 to be payable forthwith.

FURTHER, by way of additional sanction, in any future bankruptcy petition which Debtors may file under their individual names or jointly, the automatic stay provisions of 11 U.S.C. § 362 will not automatically engage against any creditor until such time as a full hearing is held after notice and the Court determines that good faith reasons exist as recognized by existing bankruptcy law for the filing of the petition. In other words, the automatic stay provisions of 11 U.S.C. § 362 will not come into effect until such time as this Court determines that the petition is filed in good faith and the Court enters a separate order authorizing imposition of the automatic stay.

SO ORDERED this 19 day of May, 1995.

Paul J. Kilburg
U.S. Bankruptcy Judge

Notice sent to: w/Judgment

Steven Edward Rieger
4522 Sugar Pine Drive N.E.
Cedar Rapids, IA 52402

Carmen Lilian Rieger
4522 Sugar Pine Drive N.E.
Cedar Rapids, IA 52402

Dan Childers
Suite 350, The Center
PO Box 5430
Cedar Rapids, IA 52406

US Attorney - CR
PO Box 74950
Cedar Rapids, IA 52407-4950

Iowa Department of Revenue
P.O. Box 10457
Des Moines, IA 50306

Eric Lam
P.O. Box 1943
Cedar Rapids, IA 52406

US Trustee - CR
Law Building Suite 400
225 2nd Street SE
Cedar Rapids, IA 52401

5-19-95
DRG